

NOTICES OF SUBSTANTIVE POLICY STATEMENTS

The Administrative Procedure Act requires the publication of substantive policy statements issued by agencies (A.R.S. § 41-1013(B)(14)). Substantive policy statements are written expressions which inform the general public of an agency's current approach to rule or regulation practice. Substantive policy statements are advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that a substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under A.R.S. § 41-1033 for a review of the statement.

NOTICE OF SUBSTANTIVE POLICY STATEMENT

OFFICE OF PEST MANAGEMENT

[M13-271]

1. Title of the substantive policy statement and the substantive policy statement number by which the substantive policy statement is referenced:

SP 13-01 License & Registration Exemptions

2. Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:

Issue Date: September 13, 2013

3. Summary of the contents of the substantive policy statement:

A.R.S. § 32-2311(A)(7) reads: "The provisions of this chapter requiring licensure and registration do not apply to: ... 7. Persons who are exempt pursuant to section 32-2318 or 32-2319." Unfortunately, there is no section 32-2318 or 32-2319.

In the OPM Task Force recommendation, the subsection now found at A.R.S. § 32-2311(A)(7) pointed to the sections pertaining to political subdivisions and landscapers. The political subdivision and landscaper sections are now found at A.R.S. §§ 32-2311.01 (political subdivisions) and 32-2311.02 (landscapers).

Accordingly, OPM will administer and enforce A.R.S. § 32-2311(A)(7) as though it read: "7. Persons who are exempt pursuant to section 32-2311.01 or 32-2311.02."

4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:

A.R.S. §§ 32-2311(A)(7), 32-2311.01 & 32-2311.02.

5. A statement as to whether the substantive policy statement is a new statement or a revision:

New

6. The agency contact person who can answer questions about the substantive policy statement:

Name: Jack Peterson
Address: 1688 W. Adams
Phoenix, AZ 85007
Telephone: (602) 542-3575
E-mail: jpeterson@azda.gov

7. Information about where a person may obtain a copy of the substantive policy statement and the costs for obtaining the policy statement:

A person may obtain a copy of the substantive policy statement from the person listed in item 6 or from the OPM's website at <http://www.sb.state.az.us>. The policy statement is free, though the OPM may charge for any applicable postage.

NOTICE OF SUBSTANTIVE POLICY STATEMENT

OFFICE OF PEST MANAGEMENT

[M13-272]

1. Title of the substantive policy statement and the substantive policy statement number by which the substantive policy statement is referenced:

SP 13-02 Political Subdivision Applicator 90 Day Exemption

2. Date the substantive policy statement was issued and the effective date of the policy statement if different from the

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issuance date:

Issue Date: September 13, 2013

3. Summary of the contents of the substantive policy statement:

A.R.S. § 32-2311.01(D)(1) reads: “The following individuals are exempt from the certification requirements of this chapter: 1. An employee of a political subdivision who applied pesticides for the political subdivision for the first time no more than ninety days before certification. This exemption does not apply to an employee who applies pesticides at a school or child care facility.” The purpose of this subsection is to provide applicators working for a political subdivision the same 90 day window to get licensed that applicators working for a business licensee have benefited from. See former A.R.S. § 32-2312(E); current A.A.C. R4-29-201(C)(2).

This subsection, if interpreted incorrectly, would allow an applicator of a political subdivision to work indefinitely without certification. Such an interpretation would run counter to the specific requirement for certification in A.R.S. § 32-2311.01(C) and render moot the other exemptions under A.R.S. § 32-2311.01(D).

Accordingly, OPM will administer and enforce A.R.S. § 32-2311.01(D)(1) as providing an exemption from certification for political subdivision applicators for a 90 day period beginning on the first day the applicator applies pesticides for the political subdivision.

4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:

A.R.S. § 32-2311.01(D)(1)

5. A statement as to whether the substantive policy statement is a new statement or a revision:

New

6. The agency contact person who can answer questions about the substantive policy statement:

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NOTICE OF SUBSTANTIVE POLICY STATEMENT

OFFICE OF PEST MANAGEMENT

[M13-273]

1. Title of the substantive policy statement and the substantive policy statement number by which the substantive policy statement is referenced:

SP 13-03 A.R.S. § 32-2326 and Suspensions

2. Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:

Issue Date: September 13, 2013

3. Summary of the contents of the substantive policy statement:

A.R.S. § 32-2326(A) reads: “The office shall deny an application for a new business license or a renewal of an existing business license if a principal of the applicant was also a principal of another business that currently owes past due termite action registration form fees, owes civil penalties to the office or has had its business license suspended or revoked within the last five years and was a principal at the time the fees became due or the acts resulting in the disciplinary action occurred.”

The purpose of this statute is to prevent a business owner from escaping discipline by shifting the pest management services of a business to another licensed business owned by the same person. Accordingly, with respect to suspensions, OPM believes the intent of this provision is to only cover suspensions that have not yet been lifted. For example, if a business license were suspended three years ago for not having a valid proof of financial security on file with OPM (see A.R.S. § 32-2313(E)), but the business license is now in good standing, then the former suspension would not invoke A.R.S. § 32-2326(A). The OPM Task Force recommendation was clear on this point, even though the actual statute is not.

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Additionally, if this subsection applied to suspensions that have been lifted, then absurd results could occur. For example, suppose a person is a principal (i.e., owner) of two pest control companies and one of the two companies gets suspended for a week for having an expired proof of financial security. Under this alternative reading of the statute, the second company would not be able to have its business license renewed for five years even though the first company's suspension had been lifted after one week. There is no purpose accomplished by this view.

Accordingly, OPM will administer and enforce A.R.S. § 32-2326 as relating to suspensions that are still in effect and not to suspensions that have been lifted.

4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:

A.R.S. § 32-2326

5. A statement as to whether the substantive policy statement is a new statement or a revision:

New

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[M13-274]

1. Title of the substantive policy statement and the substantive policy statement number by which the substantive policy statement is referenced:

SP 13-04 Initial Corrective Treatment TARFs

2. Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:

Issue Date: September 13, 2013

3. Summary of the contents of the substantive policy statement:

A.R.S. § 32-2301(17) defines "initial corrective treatment" as "the first postconstruction treatment ..." and A.R.S. § 32-2301(27) defines "postconstruction treatment" as a "treatment to control wood-destroying organisms" The phrase "wood-destroying organisms" broadly covers more than just wood-destroying termites.

After completion of an initial corrective treatment, the business licensee or certified applicator must submit a termite action report form (TARF) and fee to OPM. See A.R.S. § 32-2331; see also A.R.S. § 32-2321(C)(11). As the name indicates, termite action report forms are for termite treatments. Accordingly, OPM only requires submission of a TARF and TARF fee for an initial corrective treatment when that initial corrective treatment relates to termites.

4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:

A.R.S. §§ 32-2301(17), 32-2301(27), 32-2321(C)(11) and 32-2331.

5. A statement as to whether the substantive policy statement is a new statement or a revision:

New

6. The agency contact person who can answer questions about the substantive policy statement:

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NOTICE OF SUBSTANTIVE POLICY STATEMENT

OFFICE OF PEST MANAGEMENT

[M13-275]

1. Title of the substantive policy statement and the substantive policy statement number by which the substantive policy statement is referenced:

SP 13-05 Reciprocity

2. Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:

Issue Date: September 13, 2013

3. Summary of the contents of the substantive policy statement:

A.A.C. R4-29-212 allows the Director to waive the examination requirements in whole or in part for an individual who is certified as an applicator pursuant to A.R.S. Title 3, Chapter 2 or by another state.

The Director will waive the core examination requirement for an applicator certified by the Arizona Department of Agriculture or by another state. Applicators from another state will be required to take OPM's category specific examinations.

4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:

A.A.C. R4-29-212

5. A statement as to whether the substantive policy statement is a new statement or a revision:

New

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